87-1357 (1)

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Thomas R. Angel and Loretta C. Angel,

Appellants,

vs.

Judges Charles W. Froehlich, Jr., F.V. Lopardo, Gilbert Nares and Don Martinson,

Appellees.

On Appeal from the United States Court of Appeals Ninth Circuit

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This appeal is taken pursuant to Section 1257(2) of Title 28 of the United States Code and 42 USCS 1983

28 U.S.C. Section 2403(b) may be applicable and shall be served upon the Attorney General of the State.

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42 pp

QUESTION PRESENTED

When State Law [California Rules of Court, Rule 8(b)] provides not even the appearance of a fair hearing on a Judges Falsification of Reporter's Transcripts of hearings and Trials, isn't such absence of due process and protection repugnant to the Fourteenth Amendment of the United States Constitution sufficient to declare such Rule unconstitutional and require Federal Jurisdiction herein?

All parties appear in the caption of the case in the United States Supreme Court.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is printed in Appendix "A" hereto. The Order granting motions to Dismiss and Judgment thereon of the United States District Court for the Sourthern District of California is printed in Appendix "B" hereto. Notice of Appeal is printed in Appendix "C" hereto.

JURISDICTION

When the State Criminal Justice System denies even the opportunity for legal remedy, and except for legal remedy provided under 42 USCS 1983, no forum exist wherein a fair hearing or even the appearance of a fair hearing can be had on a State Judge's Falsification of Court Reporter's Transcripts.

The only civil legal provision for hearing on a judges falsification of reporter's transcripts is set forth in California Rules of Court, Rule 8(b), which, in substance, permits a party to request corrections to the transcripts from the involved judge. Such judge gives the parties 5 days notice to the

hearing, to be both heard and determined by the same involved judge, the accused felon himself. The right to a fair and impartial hearing is fundamental to due process under the Fourteenth Amendment of the United States Constitution. Denial of jurisdiction herein by the courts below violates the most fundamental principle of due process, the right to a fair and impartial hearing.

The nature of the proceeding below involves four state judges falsification of public record, court reporter's transcripts of trials and hearings, against appellants and one such judge fixed the jury against appellants. Appellants preceeded by filing complaint herein with the San Diego Grand Jury, the District Attorney of San Diego, Attorney General John K. Van De Kamp, and the State Board of Control of California. All of whom refused to take up the complaint.

Appellants filed complaint herein on November 17, 1986. The order granting motions to dismiss and judgment thereon by the United States District Court for the Southern

District of California was entered May 27, 1987. Notice of Appeal was filed June 1, 1987. The United States Court of Appeals for the Ninth Circuit affirmed lower courts order via Memorandum filed January 27, 1988.

The jurisdiction of this court is invoked under section 1257(2) of Title 28 of the United States Code and under 42 USCS 1983.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the Constitution of the United States, Section 1 in relevant part provides:

> "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 USCS 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Also provides "that suits under 42 USCS 1983 are excepted from prohibitions of

Anti-Injunctive Statute 28 USCS 2283 where there is a clear violation of due process under the Fourteenth Amendment of the United States Constitution."

18 USCS 1001 provides:

"Whoever, in any matter within the Jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000. or imprisoned not more than 5 years, or both."

18 USCS 1018 provides:

"Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500. or imprisoned not more than one year, or both."

California Penal Code Section 470 provides in relevant part as follows:

"Every person who, with intent to defraud, ... alters, corrupts, or falsifies ... any record of any judgment of a court ... is guilty of forgery."

California Penal Code Section 471 provides:

> "Every person who, with intent to defraud, another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in preceding section, is guilty of forgery."

California Penal Code Section 132 provides:

> "Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony."

California Rules of Court Rule 8(b) provides:

> "If any party files a request for correction of the transcripts within 10 days after the mailing by the clerk of the notice that the transcripts have been completed, the clerk sets a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and gives not less than 5 days notice thereof to all parties. At the time set or at the time to which the judge may continue the hearing, he determines the request for correction, and if none is allowed, certifies the transcript as correct ...."

STATEMENT OF THE CASE

The judges falsification of court reporter's transcripts involves 3 related

lawsuits. (Appellants referred to hereinafter as Angels) The original lawsuit was for specific performance of a contract to transfer real property, State case no. N8598, ending in a settlement made, without Angels knowledge, by the Judge, and sealed thereto until this date by falsified court reported transcript. Pursuant to the Judgment entered October 20, 1978 and signed by Judge Charles W. Froehlich, Angels have been denied appeal of the Judges ruling of nonsuit on their first two causes of action and have never been permitted to litigate causes three, four, and five in any court. The second lawsuit was a complaint to set aside judgment N8598 as rendered due to extrinsic fraud, State case no. N14705, ending against Angels via Summary Judgment. The third lawsuit was a complaint against Angels for Malicious Prosecution as to case N14705, State case no. N23298, ending in $154,000 Judgment on verdict against Angels.

On September 22, 1980, Angels filed a statement of disqualification of Judge Froehlich wherein the substantive facts were

set forth as follows:

While Angels were not present in court, Judge Froehlich made the terms of settlement in case N8598 despite Angel's attorney having informed him that such terms were in direct opposition to Angels specific instruction. Having made the terms of settlement in such fashion, Judge Froehlich orchestrated the falsification of the reporter's transcript to read that such settlement had been discussed both face-to-face and telephonically with Angels.

In Judge Froehlich's answer to such statement of disqualification, he declares under penalty of perjury that he had no knowledge or recollection of the factual material set forth in the statement sufficient to permit him to admit or deny same.

Hearing on the statement of disqualification of Judge Froehlich was heard by Judge F.V. Lopardo. The reporter's transcript of such hearing sets forth that the argument was not reported. However, Angels did observe the court reporter recording the

entire hearing. At a prior hearing, Judge F.V. Lopardo had specifically instructed his court reporter to be sure and take everything down because Angels were representing themselves.

The reporter's transcript of the hearing before Judge Gilbert Nares sets forth that the argument was not stenographically reported. Angels observed the court reporter taking down the entire argument and further, upon requesting a transcript of such hearing, the court reporter said she had to check the approximate number of pages in order to give an estimate of the cost for same. When Angels obtained the transcript from the court reporter, she informed Angels that the argument had not been recorded, and the number of pages and cost thereto was approximately 90% less than her original estimate.

At trial of case number N23298 before Judge Don Martinson, the reporter's transcript was falsified throughout against Angel's. One such falsification involved a pre-trial stipulation on admissible evidence which was

recorded in the presence of the judge, and was changed against Angeds during trial by the judge. When Angels requested, during trial and at first opportunity, to have the court reporter read back the stipulation, the judge refused. At such trial before the verdict was pronounced and in fact while the jury was in process of returning to the jury box, the opposition attorney grabbed his clients arm and said, "We got it,"

As set forth in Angels complaint herein (page 5) and documents attached thereto as Exhibit VIII, Angels evidence at trial in the original state case N8598 establishes that Angels had, under applicable State law, a written contract for purchase of the subject property. The first document signed by defendant Louis Renn states Angels had an agreement with Louis Renn for the purchase of the subject real property. In deposition, Mr. Renn identifies the word agreement in such memo to be the "Contract for purchase of real property" which specifies all terms of the agreement. Therefore such testimony

incorporates the contract by reference into the signed memo of May 29, 1977. Angels, at Renns encouragement, had a pioneer road graded and a seepage pit dug on the subject property wherein percolation tests were performed. However, and despite such trial evidence, Judge Froehlich ruled that there was no contract for the purchase of real property.

ARGUMENT

The United States District Court dismissed cause herein "on the grounds that no claim had been stated by operation of the Anti-Injunctive Act, 28 USCS 2283." Yet suits under 42 USCS 1983 are excepted from prohibitions of Anti-Injunctive statute 28 USCS 2283 where there is a clear violation of due process under the Fourteenth Amendment of the United States Constitution.

District Courts specific given reason for invoking the Anti-Injunctive statute 28 USCS 2283 is set forth in the reporter's transcript, pg. 3, lines 14-17 as follows: "Although the plaintiffs have filed complaints with the various state and judicial watchdog

agencies, I think it's obvious that their proper remedy is to appeal any judgment against them."

Only two avenues of remedy are available via civil appeal, and those are either an abuse of discretion or an excess of jurisdiction. Neither of which provide remedy for criminal wrongs committed by the judge. And falsification of reporter's transcripts (Public Record) of hearings and trials is a felony under both California and Federal law. California law being California Penal Code Sections 132, 470 and 471, and Federal law being 18 USCS 1001 and 18 USCS 1018.

Of significant importance, Civil Appeal presupposes and the law demands the existence of some trial court procedure allowing for a fair and impartial hearing as to any issue raised on appeal. Unfortunately, civil law provides for no fair and impartial hearing at the state trial court level when judges falsify the reporter's transcript's of hearings and trials. In this regard, California Rules of Court, Rule 8(b) provides

no remedy at all. Such rule permits less than 5 days to obtain and produce credible evidence against the accused felon. Even the criminal justice system, with all the resourses available to it, requires much longer preparation in prosecution of any accused felon. Further, such rule requires the litigant to seek remedy only from the accused felon. Where else in law is the accused felon permitted to determine his own guilt or innocence? Any judge who falsifies court record is most unlikely to determine against himself. Judges under such State Rule, and so inclined, are given license to victimize and brutalize litigant after litigant. Do judges require such insulation, such privilege? Is the public well served or served at all by such condition? California Rules of Court, Rule 8(b) is a violation of due process and equal protection afforded under the Fourteenth Amendment of the United States Constitution in that it denies even the appearance of a fair and impartial hearing.

There is no state law excepting California Rules of Court, Rule 8(b) which requires the pursuit of civil remedy for criminal wrongs. Civil appeal as to the judges criminal acts is not only improper, it is impossible under current State law.

In accordance with Zablocki v Redhail (1978) 434 US-374, 54 L Ed 2d 618, 98 S Ct 673, 24 FR Serv 2d 1313, "Individuals seeking relief under Civil Rights Act (42 USCS Section 1983) need not present their federal constitutional claims in State Court before coming to federal forum." In accordance with Scott v Vandiver (1973, CA 4 SC) 476 F 2d 238; Conover v Montemuro (1972, CA 3 PA) 477 F 2d 1073, "Claimant under 42 USCS Section 1983 does not have to exhaust state judicial remedies before pursuing his federal cause of action."

The Ninth Circuit has determined that the judges herein are insulated by judicial Immunity and that the judges falsification of reporter's transcripts of trial and hearings and jury fixing serve as patterns deserving

imitation, as typical, "paradigmatic." Hopefully, Circuit judges Koelsch, Anderson and Farris are alone in their definition of justice. One stated reason for urging oral arguments at the Ninth Circuit - which was denied - was that public confidence in our judicial system is essential?? (God help us All)

The Ninth Circuit has determined that the "Ultimate Acts" alleged neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction ..."

In Ultimate terms, how can any possible "Ultimate Acts" justify the elimination of hearing by falsified transcripts on 3 causes of action, being causes 3, 4 and 5 of the underlying original case N8598. Judgment in case N8598 sets forth that causes 3, 4 and 5 were dismissed pursuant to stipulation of parties, being the judges settlement secured by falsified transcript. A copy of such judgment is contained in complaint herein as Exhibit I. Information as to what these 3

causes involved or were even entitled has been presented nowhere in the instant case. However, Ninth Circuit via decision determines facts and outcome of such causes absent any knowledge and absent any hearing by any court below or any court anywhere.

Additionally, when Angels addressed the merits of their original case at the State trial court level, Judge Nares herein deleted the entifre argument from transcript,supra. Since it is a requirement in lawsuits to set aside judgments (case N14705) to both plead and prove a meritorious underlying lawsuit, Angels moved the State trial court to determine the merits of such case. The court refused such hearing and made determination on the grounds Angels were attempting to relitigate the original underlying case. More specifically, and as to causes 3, 4 and 5, how does one relitigate that which was never litigated??

As to causes one and two of Angels underlying original case, Angels established with documented evidence in complaint herein

that they were denied real property in case N8598 and case N14705 thereto related. And Angels were denied personal property in the amount of $154,000 plus interest in case N23298. All such denials of due process and equal protection was accomplished through the judges falsification of the reporter's transcript of trials and hearings, etc. The "Ultimate facts" establish that the judges acts could not in any final analysis be construed to be judicial.

This results in a truly "Catch 22" situation. Angels can not obtain redress as to the instant case until favorable determination of the underlying case, yet the actions of the judges involved have effectively precluded any such determination.

The right to hearing before determination is fundamental to due process and equal protection under the Fourteenth Amendment of the United States Constitution.

In accordance with Wiesenfield v New York State (1979, SD NY) 474 F Supp 1141, "Judges are not immune from suits for declaratory or

injunctive relief, and suits under 42 USCS Section 1983 are excepted from prohibitions of anti-injunction statute (28 USCS Section 2283)."

In accordance with Ft. Eustis Book, Inc. v Beale (1979, ED Va) 478 F Supp 1170, "Immunity of public officials in action under 42 USCS Section 1983 is not applicable in actions seeking only injunctive and declaratory relief, and not damages." Angels, in accord with complaint herein, seek only injunctive and declaratory relief.

In accordance with Doe v County of Suffolk (1980, ED NY) 494 F Supp 179, "Type of immunity available to defendant turns not upon title of defendant's office but upon function defendant performed when he committed alleged unconstitutional acts." That judges herein were judicial officers when committing unconstitutional acts is admitted, that they were performing any conceivable judicial function is totally false.

Judicial immunity turns on and attaches to a judicial act. In accord with Gregory v

Thompson, 500 F 2d 59 (1974), "Where a judge's physical assault upon plaintiff - was held not to be a judicial act." The factors determining whether an act by a judge is a judicial one relate to the nature of the act itself, i.e., whether it is a function usually performed by a judge. In Ashelman v Pope, C.A. 9 (Ariz.) 1985, 769 F 2d 1360, Judge was not granted immunity because the acts complained of were outside the scope of his official duties. In Woolley v Hi-PlainsHarvestore Inc., (D.C. Okl. 1981), 550 F Supp 161, Judge lost absolute immunity wherein "Complaint by civil suit defendants alleging that civil suit plaintiffs conspired with the judge in that prior suit to deprive them of their property without due process ..." Such case is identical to Angels situation herein.

Chief Justice Powell of the United States Supreme Court emphasized that the major reason for absolute immunity is the existence of "alternative forums and methods for vindicating private rights," and that absent

such forums, litigants are precluded of any possiblility for the vindication of their rights elsewhere in the judicial system." Certainly Angels are precluded of any possibility for the vindication of their rights elsewhere in the judicial system.

In accordance with Erdmann v Stevens 458 F 2d 1205, 1208 (2 Cir 1972) Cert denied 409 US 889 (1972); See also Law Students Civil Rights Research Council Inc. v Wadmond 299 F Supp 117, 123 (SD NY 1969)(three-judge court) affd 401 US 154, 91 S Ct 720, 27 L Ed 2d 749 (1971), "No sound reason exists for holding that federal courts should not have the power to issue injunctive relief against the commission of acts in violation of a plaintiffs civil rights by State Judges acting in their official capacity." In Stump v Sparkman 435 US 847 (1978), the court held that "a Judge's private, prior agreement to decide in favor of one party is not a 'judicial act' because judicial impartiality is one proper expectation of the parties." Judicial impartiality is terminated when

Judges falsify the reporter's transcripts of hearing and trials, and judicial impartiality does not exist wherein judges determine their own guilt or innocence as to criminal acts. The Injunctive relief exception to absolute judicial immunity was reaffirmed in Heimbach v Village of Lyons 597 F 2d 344, 347 (2d Cir 1979), Slavin v Curry 574 F 2d 1256, 1264 (5th Cir 1978) and Harris v Harvey 605 F 2d 330, 335 n7 (7th Cir 1979).

By defining the limits of qualified immunity essentially in objective terms, no license is provided to lawless conduct. The public interest in deterrence of unlawful conduct and in compensation of victims remains protected by a test that focuses on the objective legal reasonableness of an official's act. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate. In accord with Pulliam v Allen (1984) 466 US 522, 80 L Ed 2d 565, 104 S Ct 1970, "Congress intended 42 USCS Section 1983 to be independent protection for

federal rights and nothing suggests that Congress intended to extend common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review."

Due process inherently involves access to our courts, i.e. Justice. Access terminating at the trial court level via falsification of reporter's transcript limits access to, and negates the reason for and existence of our upper courts. Angels right to any hearing as to their third, fourth and fifth causes of action and appeal as to causes one and two in state case N8598 was eliminated by Judge Froehlich's orchestrating the falsification of court reporter's transcript, and such conduct constitutes a violation of due process under the Fourteenth Amendment of the United States Constitution. No provision in law for an impartial and fair hearing on a judge's falsification of court reporter's transcripts violates the fundamental right to due process under the Fourteenth Amendment of the United States Constitution.

In accordance with Wirth v Surles (1977, CA 4 SC) 562 F 2d 319, 45- ALR Fed 864, Cert den 435 US 933, 55 L Ed 2d 531, 98 S Ct 1509, "There are two essential elements which must be proven by plaintiff in order to state claim upon which relief can be granted under 42 USCS Section 1983: first, conduct complained of must have been done by some person acting under color of law and second, such conduct must have subjected complainant to deprivation of rights, privileges, or immunities secured to him by constitution and laws of United States." In accord with Buchler v United States (1974, ED Cal) 384 F Supp 709, "Motion to dissmiss cannot be granted for lack of subject matter jurisdiction if complaint purports to set out federal claim, and claim is not insubstantial and frivolous." In accord with Cornelius v La Croix (1983, Ed Wis) 575 F Supp 1392, "Complaint which alleges deprivation of property without due process of law, under color of state law ... is sufficient to give court subject matter jurisdiction pursuant to 42 USCS Section 1983

and 28 USCS Section 1343." In accordance with Blount v Mande (1975, DC Md) 400 F Supp 1190, "In order to establish subject matter jurisdiction under 42 USCS Section 1983 complaint must allege facts which show deprivation of constitutional right and that acts of defendants were done under color of State law."

In accordance with Mitchum v Foster (1972) 407 US 225, 32 L Ed 2d 705, 92 S Ct 2151, "Purpose of federal civil rights statute (42 USCS Section 1983) authorizing action at law, suit in equity, or other proper proceedings for redress of deprivation, under color of state law, of rights secured by Federal Constitution and federal laws, is to interpose federal courts between states and people, as guardians of people's federal rights, and thus to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial; in carrying out this purpose, Congress, by expressly authorizing suit in equity as one means of redress, has plainly authorized

federal courts to issue injunctions in section 1983 actions." In accord with Scheuer v Rhodes (1974) 416 US 232, 40 L Ed 2d 90, 94 S Ct 1683, etc., "Through civil rights statutes, Congress intended to enforce provisions of Fourteenth Amendment against those who carry badge of authority of state and represent it in some capacity, whether they act in accordance with their authority or misuse it." In accordance with District of Columbia v Carter (1973) 409 US 418, 34 L Ed 613, 93 S Ct 602, etc., "purpose of 42 USCS Section 1983 was to afford federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, State laws might not be enforced and claims of citizens to enjoyment of rights, privileges, and immunities guaranteed by Fourteenth Amendment might be denied by State agencies."

In accord with Tyler v Lark (1973, CA 8 Mo) 472 F 2d 1077, cert den 414 US 864, 38 L Ed 2d 84, 94 S Ct 114, "42 USCS Section 1983 was designed to provide means of redress for past violations of civil rights." In accord with

Duchesne v Sugarman (1977, CA 2 NY) 566 F 2d 817, "42 USCS Section 1983 was designed to protect individuals against misuse of power made possible only because wrongdoer is clothed with authority of State law." Arguments as set forth herein, were set forth in pleadings at the courts below.

CONCLUSION

Defendants, each one, being judges, were clothed with the authority of State law. The judge's conduct of falsifying reporter's transcripts of trials and hearings must be preceived as not a normal judicial function. Such conduct deprived Angels of hearings on 3 causes, deprived Angels of appeal on 2 causes, and with falsified and absent court record and jury fixing rendered redress with the upper courts a complete and total mockery. And such conduct deprived Angels of property, both real and personal.

Federal District Court demands Angels go forward, or backward, depending on your viewpoint, with State civil appeal for criminal wrongs absent a fair and impartial

hearing at the trial court level, and thereto absent a valid record or any record in certain instances.

Ninth Circuit's memorandum of decision encourages judge's falsification of court reporter's transcripts of trials and hearings and jury fixing since litigants can not address such criminal acts until there is a favorable court determination on the original case, which has been made unobtainable by the criminal acts of the involved judges. Such decision insures absolute judicial immunity and erases all hope for and confidence in judicial accountability.

Ninth Circuit assumes that no cause was stated nor can be stated because Angels did not receive a favorable state court ruling on the underlying original case at trial. In so doing the Ninth Circuit effectively makes a determination of facts and law as to the underlying original case without hearing and compounds to death the already overwhelming injustice.

When 4 judges out of 8 in any particular court, as is the case in this instance (San Diego North County Court) are falsifying court record it would seem to make considerable sense to investigate such conduct if the public is to receive any protection whatsoever.

While the judges, in their criminal acts, appear to all the world judicial; Angels, for their pursuit of legal remedy, are branded malicious and buried under insurmountable debt of judgment. This is not just, and can not be called justice.

Why does Ninth Circuit in their memorandum of decision flag the fact that Angels are laymen? Is this an issue somewhere contained in the substantive facts? How is this fact, without more, relevant to decision herein? Is the purpose to denigrate the ligitimacy of this appeal? After nine years of litigation the hard way, Angels are informed on the impossibility of obtaining legal representation against one judge, much less 4 judges. And after 9 years of litigation

involving extensive research, reading and rereading of trial transcript and all moving papers done by the attorneys, and all law relevant to specific performance of a contract to transfer real property, Angels are informed of the merit of the original underlying case. Angels have not litigated for nine years because of any lack of belief in their original case, nor have Angels litigated for nine years out of any malice, which would be tantamount to burning one's self at the stake.

It is common knowledge among attorneys that court reporter's transcripts of trials and hearings are routinely falsified by judges in San Diego North County Superior Court. Attorneys do not readily pursue legal remedy when a judge falsifies court record because they must appear before the same judges again and again on behalf of many clients. Who then but a layperson will pursue this injustice, and Who but the United States Supreme Court can end this injustice?

For all the foregoing reasons, Angels ask that California Rules of Court, Rule 8(b) be

ruled unconstitutional and that decisions of the courts below be reversed.

Dated: February 8, 1988

Respectfully Submitted,

Thomas R. Angel

Loretta C. Angel

Appendix A-1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27, 1988

FOR THE NINTH CIRCUIT

THOMAS R. and LORETTA C. ANGEL Plaintiffs-Appellants) vs. JUDGE CHARLES W. FROEHLICH, JR., ET AL.,) Defendants-Appellees.)	)	C.A. No. 87-5965 D.C. No. CV-86-2270-S MEMORANDUM*

On Appeal From the United States District Court for the Southern District of California
Edward J. Schwartz, District Judge, Presiding

Submitted January 14, 1988**

Before: KOELSCH, ANDERSON and FARRIS, Circuit Judges

Appellants, both laymen, find themselves in a legal thicket. Their suit, now here on appeal from a judgment of dismissal in the district court is based upon the Civil Rights

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Ninth Circuit Rule 34-4.

Act, 42 U.S.C. section 1983 (1982); it ostensibly sought injunctive relief against several California Superior Court judges based upon the latter's assertedly due process violations with respect to rulings made and acts taken in pending litigation.

No useful purpose would be served by an extended explication of the reasons given by the district court for its summary disposition of appellants' action. Suffice it to say that on this record the result announced, the dismissal, was correct.

Judicial immunity serves to insulate the defendants from this suit. As pointed out in Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986)(en banc), this court must not "construe the immunity doctrines too narrowly by focusing on underlying actions instead of looking to the ultimate acts." So considered the "ultimate acts" as alleged by appellants neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction...." To the contrary, all are well within the contours

of the "paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." Forrester v. White, No. 86-761, 48 S.Ct. Bull. (CCH) B411 (January 12, 1988).

AFFIRMED. Usual costs to appellees.

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FILED
MAY 27, 1987

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MAY 28, 1987

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

THOMAS R. ANGEL, ET AL., Plaintiffs, v. JUDGES CHARLES W. FROEHLICH, JR., et al., Defendants.	No. 86-2270-S(CM) ORDER GRANTING MOTIONS TO DISMISS AND JUDGMENT THEREON Hearing Date: April 20, 1987 Time: 10:30 a.m.

The motions of defendants to dismiss the action came on regularly to be heard on April 20, 1987, before the Honorable Edward J. Schwartz, Senior Judge presiding. Defendants appeared by Lloyd M. Harmon, Jr., County Counsel, by Phillip L. Kossy, Deputy County Counsel; plaintiff Loretta C. Angel appeared pro se; there was no appearance for plaintiff Thomas R. Angel. The Court having given due consideration to said matters, including

pleadings filed and argument, and good cause appearing therefor,

IT IS ORDERED that the motions to dismiss of defendants be, and hereby are, granted on the grounds that no claim has been stated by operation of the Anti-Injunction Act, 28 United States Code section 2283 and that this Court has no jurisdiction over the claim in that plaintiffs have not alleged a constitutional basis for their claim.

IT IS FURTHER ORDERED that the motions of defendants for attorneys' fees be, and hereby are, denied.

IT IS ORDERED, ADJUDGED AND DECREED that the complaint and action be, and hereby is, dismissed.

DATED: May 26, 1987

Signed / E. J. Schwartz

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

NOT Signed

LORETTA C. ANGEL, Pro se

Appendix C-1

Thomas R. & Loretta C. Angel
Post Office Box 753
Rancho Santa Fe, CA 92067
Phone: (619) 943-1419

IN THE UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT

THOMAS R. ANGEL, and LORETTA C. ANGEL Appellant/Plaintiffs	Court
vs.	of Appeals No.
JUDGES CHARLES W. FROEHLICH, JR., F. V. Lopardo, Gilbert Nares and Don Martinson Appellee/Defendants	87-5965

Notice of appeal to the Supreme Court of the United States

Notice is hereby given that Thomas R. Angel and Loretta C. Angel, the Plaintiffs and Appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of this court entered January 27, 1988 affirming dismissal of case herein by the United Statess District Court for the Southern District of California entered May 28, 1987.

This appeal is taken pursuant to section 1257(2) of Title 28 of the United States Code and pursuant to 42 USCS 1983.

Date: February 8, 1988

Signed//_____
Thomas R. Angel
Plaintiff/Appellant pro se

Signed//_____
Loretta C. Angel
Plaintiff/Appellant pro se